

SEED ADVISORY BOARD
California Department of Food and Agriculture
Plant Diagnostic Center
3294 Meadowview Road
Sacramento, CA 95832

On February 23, 2005, Chairman Kelly Keithly called the meeting to order at 9:05 a.m. and acknowledged the attendance by roll call of the following:

Members:
Rick Falconer
George Hansen
William Van Skike

Gabe Patin
Ron Tingley
Ken Scarlett
Cannon Michael

Guests:
John Heaton
David Godfrey
Rich Matteis
Betsy Peterson
Kent Bradford
Susan Webster

Deborah Meyer
Jim Effenberger
Connie Weiner
Umesh Kodira
Bill Sandige
Don Joley

Changes/Additions to the Agenda:

Chairman Keithly called for any changes to the Agenda. There were none.

Introductions and Personnel Changes

Kelly Keithly was acknowledged as the new Chairman. John Heaton was introduced as the new Senior Biologist of the Seed Services Program at CDFA, replacing David Godfrey. The promotion of David Godfrey to Program Supervisor of the Nursery, Seed and Cotton Programs at CDFA was announced. Pat Thalken was announced as the new Senior Ag Biologist for the Nursery Program and Susan McCarthy as the person for the Registration and Certification Program. The promotion of Deborah Meyer to Laboratory Supervisor was also acknowledged.

Minutes – May 18th, 2004

Chairman Keithly asked for corrections or changes to the minutes. None were proposed. Board member Van Skikes motioned to accept the minutes as presented. Motion was seconded by Board member Hansen. Vote was unanimous and the Minutes of the meeting on May 18th 2004 were accepted without change.

Seed Dispute Resolution procedures – arbitration

Rich Matteis of the California Seed Association (CSA) provided each member with a copy of a working Draft of the NOTICE ARBITRATION/ CONCILIATION/MEDIATION REQUIRED BY SEVERAL STATES. Several points of clarification and significance were noted in the new draft.

Section 3915 Seed Dispute Procedures: The term “borne” was added for clarification. The pertinent part now reads:

“(a) Intent and Purpose. The intent and purpose of these seed dispute procedures is to provide farmers or persons purchasing seed and the sellers of the seed an alternative to litigation when seed planted in California allegedly fails to perform as represented. The term “fails to perform as represented” shall include, but is not limited to, failing to conform to label statements or advertisements and representations of quality or performance, or causing crop loss due to seed **borne** disease.”

Section 3916 added:

Item (d) was expanded to include “other value added components” as part of what can be sold by a seller. This change allows other individuals or companies that may have handled the seeds, such as seed treaters or coaters, to also be included in the NOTICE.

Item (f) stated “Perform” is the equivalent to “produce” as used in the Notice.

Section 3917 contained new language that clarified the manner in which an equal pool of people may be recommended and selected to serve on the Seed Dispute Council.

Item (e) Confidentiality was acknowledged by Matteis to be in need of review by legal counsel as the present form may be in conflict with statutes involving the public’s right-to-know.

Section 3919. Investigative Procedures. The previous language was believed to be too limiting in the scope of the investigation.

Item (a) previously stated:

Upon review and acceptance of a complaint, the Department shall initiate a full investigation of matters complained of the crop.

This was expanded to state:

Upon review and acceptance of a complaint, the Department shall initiate a full investigation of matters complained of the crop alleged to be damaged or matters directly related to the complaint.

Item (b) set forth time frames under which the Seed Dispute Council shall complete its investigation. Several Board members questioned the adequacy of the allotted time. The point was made that if growouts under similar growing conditions are necessary, the time allotted for conclusion of the investigation may not be long enough. The need for special language to address the additional time for growouts was acknowledged by Matteis and other Board members.

Section 3920. Alternative Dispute Resolution Procedures. Clarification of the notification process after a successful conciliation has occurred, was provided in item (a). The need to conduct seed complaint hearings in accordance with the Administrative Adjudication Bill of Rights codified in the California Government Code was added to item (b) (1). Items (2)(A) through (2)(E) identify the parties that may participate in the Seed Complaint Hearings. Most notable is item (2)(C) which allows the hearing officer to recognize persons who have knowledge of the complaint or the seed or other relevant information. In addition, the hearing officer may use item (2)(D) to recognize expert witnesses called on by the Department, the purchaser and the seller; and item (2)(E) attorneys for the disputing parties. The important point is that attorneys must be recognized by the hearing officer before they are allowed to participate.

A brief discussion regarding the need for legal counsel to review item (E) ensued. The point was made that participation by attorneys frequently makes dispute resolution through mediation a more difficult task. In that regard, item (E) was felt to be a useful tool for the hearing officer. When item (E) is included in Section 3920, the hearing officer would be able to sight code that allows the hearing officer to limit the level of participation by the attorneys. It was acknowledged however, that there may be problems with limiting attorney participation in this manner. For example, does item (E) deny participants the full benefit of legal counsel? Although the Seed Complaint Hearing is part of a dispute resolution procedure and not a court proceeding, the Board decided that item (E) should be reviewed by legal counsel.

A new item in Section 3920 (b) (5) gives the presiding officer discretion about the admission of evidence. Item (b)(5)(c) provides the hearing officer the ability to determine the protocol of the mediation, subject to agreement of the disputing parties. Resultant mediated agreements would then become part of the Report of Fact.

In the event that conciliation and mediation fail, Section 3920 (d) (1) allows the hearing officer to declare an impasse and allow the Seed Dispute Council to deliberate on the complaint, ultimately formulating its decision (arbitration). Deliberations of the Council are not part of the hearing and as such shall be closed to participants other than the Council members and alternatives. The new section further states that the complainant bears the burden of proof of facts supporting the complaint. Findings of fact shall be supported by a preponderance of evidence.

The arbitrated decision made by the Council shall include findings and recommendations such as, but not limited to, Sections 3920 (d) (3)(A) through (E): New findings and recommendations that the Council can make were presented as;

(A) The complainant failed to provide adequate evidence to prove the facts complained of;

(B) because of the circumstances, no action need be taken;

(E) assignment of costs, if any, of settlement, including filing fees and damages.

Finally, Matteis presented Section 3920 (d) (5)(new) which stated that the Report of Fact or Arbitration shall be in writing and include a statement of factual findings and recommendations therein. Clarification was also provided for Section 3920 (d) (5) (f), which explains that the Report of Fact and recommendation of arbitration may be used in accordance with the rules of evidence and procedure in any litigation involving a complaint that was the subject of alternative dispute resolution.

Matteis agreed that after modifications, a new draft should be presented for the Legislative Committee of the CSA Annual Convention to review, and then taken to the next Seed Advisory Board Meeting in May 2005. If the Board finds it satisfactory, the new draft should be presented to CDFA legal counsel for review.

Legislation 2005

Assembly Bill 3024 Chapter 459 was approved by the Governor on September 10, 2004. As requested by the Board, this act amended Section 52282 of the Food and Agricultural Code to allow the Secretary the discretion to determine which enforcement activities shall be conducted by the commissioner of each county and which enforcement activities shall be conducted by department personnel.

Budgetary Issues affecting the California Department of Food and Agriculture

David Godfrey informed the Board that all programs will experience a substantial increase in Pro Rata. He explained that Pro Rata is the amount of money each department must pay for indirect services such as access to the Departments of Finance, Personnel Administration, General Services and the Legislature. The increase for Pro Rata paid by CDFA is expected to be 265%. While the impact to Seed Services will be significant, it was explained that since the budget office collects Pro Rata on the basis of a program's annual budget, other programs carrying substantial amounts of money in their budgets for research will suffer greater financial impact. The request was made to discuss this again at the next Board meeting.

TEAM SEED Workshops 2005

Godfrey explained the concept of TEAM SEED and previous efforts by personnel in the Seed Services program to educate county personnel about TEAM SEED and the proper procedures for collecting and submitting official seed samples. He explained that TEAM SEED Workshops were offered on a limited basis in 2004 due to promotions, position vacancies and the Department's need for immediate response to issues surrounding Sudden Oak Death in nursery stock. The current plan is to provide training to counties that request it and to offer TEAM SEED Workshops in the Fall of 2005.

Seed Laboratory Report

Deborah Meyer provided a summary of the 2004 Seed Laboratory written report. She noted the numbers of quarantine, service and regulatory (official), feed mill approval and identification samples received. Meyer emphasized that the numbers of "tests" provided for service and regulatory samples greatly exceeded the number of samples received. She further noted that the number of tests requested for service samples rose significantly in the last quarter of the year despite the service testing fee increases noticed in November and implemented in December. Additional activities by Seed Laboratory personnel included publications and participation in professional organizations, as well as conducting training workshops for individuals from other public and private laboratories.

Out of State Trip Report

Meyer discussed the importance of continued participation by laboratory personnel at professional meetings. She provided a copy of the written report filed with the Department for a more in depth discussion of their participation at the 2004 Association of Official Seed Analysts (AOSA)/Society of Commercial Seed Technologists (SCST) Annual Meeting held in Tunica, Mississippi. Meyer explained that the current topic of concern among the AOSA, SCST and the International Seed Testing Association (ISTA), as well as the seed industry, is the recognition and adoption of equivalent seed testing rules to reduce barriers to trade between countries based solely on testing procedures.

Meyer presented information on the newly implemented USA Accredited Seed Laboratory Program (USA-ASLP). This voluntary accreditation program was developed through cooperative work among the following organizations: AOSA, SCST, Association of American Seed Control Officials (AASCO), Association of Official Seed Certification Agencies (AOSCA), American Seed Trade Association (ASTA) and USDA-Agricultural Marketing Service (AMS). The USDA-AMS serves as the accreditation authority for the USA-ASLP. Through the USA-ASLP a seed laboratory may obtain accreditation following a successful audit of the laboratory quality system conducted by USDA-AMS and the payment of fees. The USA-ASLP was developed in response to pressure from the international seed trade community for laboratories in the United States to operate under some sort of accreditation program similar to accreditation programs required in other countries. Implementation of this voluntary seed laboratory accreditation program was approved by both the AOSA and SCST memberships at the annual meeting.

Meyer went on to explain the difference between the USA-ASLP and the National Seed Health Accreditation System (NSHS). Under the NSHS, seed health testing entities (laboratories and field inspectors) are accredited by USDA-APHIS to conduct seed health inspections/testing for phytosanitary certification. Under this program private entities may apply for accreditation, while government entities are currently exempt. However, to comply with phytosanitary certification requirements, both private accredited entities and government entities must use the standardize laboratory and field inspection protocols approved by the NSHS. *USDA-APHIS is now considering a proposal to require government entities to participate in the accreditation program.* This would be a very costly requirement for government entities since the accreditation program requires separate accreditation audits and fees for each seed-borne disease organism. In general, most governmental entities are required to conduct seed health inspections for numerous seed-borne organisms. Private entities however, can be selective in the seed-borne organisms for which they choose to provide testing services. The NSHS requires repeat audits and renewal fees every three years.

Chairman Keithly called for discussion or questions regarding Meyer's presentations. Board member Van Skike noted the participation of lab personnel in the development of publications on seed identification, in particular a series of laboratory seed identification manuals provided by the Seed Laboratory to USDA-APHIS port inspectors. He expressed concern about the lack of ability by USDA-APHIS port inspectors to accurately identify different types of cottonseed products in shipments. He inquired as to whether the seed identification manuals provided by the Seed Lab contained such information. Meyer provided a set of the manuals for the Board's review and explained that such information was not contained in this particular set of manuals. The exact manuals being used by USDA-APHIS port inspectors for identifying cottonseed products was not known, however Godfrey volunteered to find out what manual is being used for this purpose.

Seed Biotechnology Center Update

Kent Bradford provided a summary of activities at the UC Davis Seed Biotechnology Center. The facility is now fully staffed and the center is already experiencing the benefits of a complement of researchers. The Center develops scientific data that can be used for informed decision making related to various management practices of traditional and biotech crops. The Seed Biotechnology Center continues to aggressively pursue additional funding from numerous other grant sources. Bradford and SBC staff will continue their outreach efforts to various groups interested in seed biotechnology. In addition he will be participating in numerous professional meetings and workshops.

Seed Program Recommendations Implementation Report

Lab Fees:

David Godfrey acknowledged Deborah Meyer's presentation of the list of new fees for tests conducted on service samples by the Seed Lab. He further explained how these fees were placed into the California Code of Regulations with the assistance of CDFA Permits and Regulations Specialist Stephen Brown. The new list of fees represents the first significant change in fees since 1987.

Time Study:

John Heaton provided a summary of the number of official samples submitted by the counties to the Seed Lab for analysis. One thousand and six samples were submitted during the fiscal year 2003-04. A breakdown was provided by county, district, type of seed, as well as how many samples were submitted each month. After summarizing the sampling effort by counties, Heaton presented the results of a time study that estimated the cost for current state personnel to conduct the sampling responsibilities presently performed by county personnel. The estimate did not include salaries of personnel currently funded by the Seed Services Program, but did include estimates of mileage, fuel, lodging, meals and hours needed to draw samples in each district. Heaton reported that based on the figures provided by the district biologists, it would cost the Seed Services Program a minimum of \$30,000 to take over the responsibilities for sampling. He qualified the estimate however by stating he believed the estimates were low due to the mileage estimates from district biologists being lower than what he and Godfrey have experienced while performing similar duties in previous jobs.

There was a brief discussion regarding the potential saving of \$90,000 that could occur if CDFA personnel collected the samples instead of the counties. Members noted that in previous meetings, the Board had expressed the desire to continue funding counties at the level of \$120,000, even if they no longer did the sampling. Members acknowledged the desire to maintain funding of the counties at the \$120,000 level, but also expressed that the amount could be reduced if the Board desired.

Heaton clarified that if the district biologists conducted the sampling, that activity alone would consume almost all of their time. It was explained that only one district biologist receives 100% funding from Seed Services. The other district biologists are partially funded by other programs and must juggle or prioritize their duties. Due to possible critical needs in other programs, it may not always be possible for CDFA personnel to sample seeds at the most opportune time. Heaton reminded the Board that the district biologists are also the first line of contact for county personnel. In addition, district biologists play a critical role in the investigation of seed complaints that might occur in their respective districts. Finally, the role of district biologists as liaisons to counties during TEAM SEED Workshops was also explained.

The Board asked what the approximate cost was to conduct TEAM SEED Training. Godfrey estimated that from previous years, the amount is typically \$30,000. The observation was made by Board members that if the counties did not perform the seed sampling, TEAM SEED Training will no longer be necessary and the money saved would offset the additional cost Heaton estimated for Seed Services to take over the sampling.

Godfrey volunteered that the counties have been very responsive to focusing their sampling efforts and have increased their efforts on the sampling of seeds that the Board wished to ensure compliance. The point was also made by Board members that while some counties are in support of CDFA assuming the responsibility for sampling, other counties wish to continue their involvement in seed sampling. Since it was felt that more information was needed, a motion was made to refer the issue to a committee at the California Seed Association for further consideration and a possible vote by CSA members. The motion was seconded and passed by unanimous vote.

Lab Relocation:

Umesh Kodira briefly discussed the plans for relocation of the Seed Laboratory. He reported that the Secretary of CDFA and the Dean of UCD would like to see a merger between the Plant Diagnostic Labs and UC Davis. The Seed Laboratory would be considered part of the Plant Diagnostic Center and would therefore be part of the merger. The Dean has expressed that UCD is not interested in managing these labs at their present location but would consider a merger if the labs were relocated to Davis. While the Secretary is also in favor of the merger, he does not want it drag out 10 years. Instead he favors a process that would take only three to five years. The Governor is reported to be in support of the concept, however

the reality is that there's no money to presently achieve a merger. Kodira explained that if a merger occurred, UC would provide services to the state on a contractual basis.

Fund Condition for Seed Services

David Godfrey provided a spreadsheet to summarize the fund condition for seed services. He explained that after two years of having expenditures exceed revenue, 2004/05 has finally seen total revenue slightly exceed total expenditures. He noted that revenue collections have steadily increased to the present amount of \$1,204,640. He attributed this increase to the higher assessment rate and the greater sales of high-value seed, particularly seed with new traits incorporated with biotechnology. As seeds with these new traits gain greater acceptance and more market share, Godfrey predicted the increase in revenue collection will continue.

Another line noted on the spreadsheet was Adequate Reserves. Godfrey provided a brief explanation of the state's requirement to maintain a three month reserve in each program's budget. A reserve of approximately 1/4th of any program's budget is the amount of money that the state estimates a department will need to shut a program down. The Seed Services program has successfully met this requirement for several years.

Assessment Rate on seed sales in 2003/04 for the 2005 renewal period

Godfrey identified three major expenditures as Seed Services, Seed Laboratory and Ag Commissioners. He showed that with a continued increase in the value of seed sold and the present assessment rate, the expected revenue will adequately cover a 3% increase in expenditures for Seed Services and the Seed Laboratory. He further explained that grants, or expenditures to the Ag Commissioners and the Seed Biotechnology Lab did not receive a 3% increase in the projections.

Godfrey reminded the Board that the \$0.32 assessment rate is still considerably lower than the 0.40 rate allowed by law. He acknowledged that the rates were lower in previous years but he explained that those rates were lowered in order to deplete excess funds, which were at risk of being utilized by other government entities. The \$0.32 rate was set by the Board to rebuild reserves and to provide adequate funding for the Seed Biotechnology Center.

Finally, Godfrey noted that it appears the program has achieved a comfortable equilibrium. He predicted that the present rate of assessment and an increasing value of seed sold, will satisfactorily meet the needs of the program for several years.

Additions

Chairman Keithly asked for any additional items.

It was decided that the next meeting of the California Seed Advisory Board would be May 18, 2005 at the Plant Diagnostic Center in Sacramento.

After no further issues were brought forward, Board member Falconer motioned that the meeting be adjourned. The motion was seconded by Board member Van Skike. After a unanimous vote in favor, Keithly adjourned the meeting at 11:30 am.

Respectfully Submitted,

John Heaton